



CUI//SP-MIL/SP-PRVCY

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02071

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable.

APPLICANT'S CONTENTIONS

During high school, he was in the Health Occupations program, so he asked his recruiter, if he could be placed in a health care position. After completing Basic Training, he was assigned as an apprentice administration specialist. His military occupational specialty (MOS) did not suit him well so on multiple occasions, he requested to be positioned as a X-ray technologist but was denied. After speaking to his base commander, he was referred to a psychologist who recommended he be discharged based on his inability to succeed.

After discharge, the applicant pursued his career goals and became a Radiographer, graduated with honors, became a recognized employee and a model citizen of society. In support of his request for clemency, the applicant provides a Graduation Certificate.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 14 Jan 81, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, chapter 2, section A, paragraphs 2-4c, for apathy and defective attitude toward his military responsibilities. The specific reasons for the action were:

- a. On 31 Oct 80, the applicant received an Article 15 for being absent from his organization for multiple days. As a result, the applicant was ordered to forfeit \$50.00 and ordered to perform 14 consecutive days of extra duty.
- b. On 24 Nov 80, the applicant received an Article 15 for failing to go at the time prescribed to his appointed place of duty at the prescribed time. As a result, the applicant was ordered into correctional custody for seven days.

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
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On 5 Dec 80, the applicant was evaluated by the Mental Health Clinic, at the request of his squadron commander. It was determined the applicant had no major psychiatric disorder as defined in AFM 35-4, *Physical Evaluation for Retention, Retirement and Separation*.

On 23 Jan 81, an evaluation officer found the applicant was unsuitable for further military service in the Air Force.

On 26 Jan 81, the Staff Judge Advocate found the discharge action legally sufficient.

On 27 Jan 81, the discharge authority directed the applicant be discharged under the provisions of AFM 39-12, chapter 2, section A, paragraphs 2-4c, with a general (under honorable condition) service characterization without the offer of probation and rehabilitation.

On 27 Jan 81, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Unsuitable-Apathy, Defective Attitude-Evaluation Officer." He was credited with 7 months and 12 days of total active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit D.

POST-SERVICE INFORMATION

On 2 Mar 23, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied.

APPLICABLE AUTHORITY/GUIDANCE

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

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- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie Memorandum.

On 14 Feb 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

General (Under Honorable Conditions). If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the member's military record.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds no evidence of any error or injustice with the applicant's discharge. The applicant was discharged for having an unsuiting condition of apathy and defective attitude. This condition is not formally a mental health condition nor was categorized under mental health conditions per AFM 39-12. This type of discharge was for behaviors deemed unsatisfactory or unacceptable for a military setting. Character and behavior disorders were also considered as an unsuiting condition under AFM 39-12. Since the applicant did not meet diagnostic criteria for a character and behavior disorder, he was not discharged for his mental health condition or under this category. He had a different unsuiting condition and his documented and observed behaviors were better aligned to the classification of apathy and defective attitude and not to personality disorder or character or behavior disorder. His discharge for having an unsuiting condition of apathy and defective attitudes appeared to be appropriate and consistent to his records; therefore, the Psychological Advisor finds no error or injustice with the applicant's discharge.

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Liberal consideration is applied to the applicant's request. The following are responses to the four questions from the Kurta Memorandum from the information presented in the records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends his Military Occupational Specialty (MOS) did not suit him, he attempted to transfer to a health related position or other positions numerous times but was denied and given a General (Under Honorable Conditions) discharge. He did not make any contentions regarding his mental health condition.

2. Did the condition exist or experience occur during military service?
The applicant was command referred to a mental health evaluation due to his disciplinary actions and behaviors during service. The results of the evaluation yielded a diagnosis of Adjustment Reaction of Adolescence. He walked-in once to the mental health clinic for complaints of depression and anxiety in response to his Article 15 action. These symptoms were reported to be resolving during a follow-up visit a week after most likely due to his adjustment/acceptance of his disciplinary action.

3. Does the condition or experience actually excuse or mitigate the discharge?
There is no evidence the applicant's mental health condition caused his two Article 15's based on his personal statement to his disciplinary/discharge actions at the time of service. His Article 15's were the primary reason for his discharge. The applicant's mental health provider opined he had character and behavior disorder traits (not confirmed diagnosis) of immature and maladaptive behaviors affecting his inability to deal with authority figures and adapt to military life. He was recommended for administrative discharge action from the mental health provider because his attitude and behavior would become an administrative and/or disciplinary burden to his squadron since he did not appear to be amenable to changing his attitude or behavior. His character and behavior traits were a contributing factor to his unsuiting apathetic and defective attitudes, but his documented and observed behaviors were better aligned to the classification of apathy and defective attitudes and not to personality disorder or character or behavior disorder. There was no error or injustice with his discharge and his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?
Since his mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 2 Mar 23 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency and discharge upgrade requests are technically untimely. However, it would be illogical to deny a such

application as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. § 1552(b).

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale of AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02071 in Executive Session on 21 Jun 23:

Work-Product [Redacted] Panel Chair
[Redacted] Panel Member
Work-Product [Redacted] Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 29 Jun 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 14 Feb 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 28 Feb 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Mar 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

1/28/2024

Work-Product [Redacted Signature]

Board Operations Manager, AFBCMR
Signed by: *Work-Product* [Redacted Name]